

# SENATE BILL 287

Q7, M3, C5

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CF HB 464

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By: **The President (By Request – Administration) and Senators King, Madaleno, McFadden, Munson, Forehand, Garagiola, Harrington, Klausmeier, Lenett, and Pinsky**

Introduced and read first time: January 22, 2010

Assigned to: Budget and Taxation

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 17, 2010

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Maryland Clean Energy Incentive Act of 2010**

3 FOR the purpose of extending a certain credit against the State income tax for  
4 electricity produced by certain facilities from certain qualified energy resources  
5 until a certain date; extending the period in which the Maryland Energy  
6 Administration may issue certain qualifying certifications; prohibiting the  
7 Administration from issuing initial credits under a certain amount; and  
8 generally relating to a certain income tax credit for electricity produced from  
9 qualified energy resources.

10 BY repealing and reenacting, with amendments,  
11 Article – Tax – General  
12 Section 10–720  
13 Annotated Code of Maryland  
14 (2004 Replacement Volume and 2009 Supplement)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
16 MARYLAND, That the Laws of Maryland read as follows:

17 **Article – Tax – General**

18 10–720.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (a) (1) In this section the following words have the meanings indicated.

2 (2) "Administration" means the Maryland Energy Administration.

3 (3) (i) Except as provided in subparagraphs (ii) and (iii) of this  
4 paragraph, "qualified energy resources" has the meaning stated in § 45(c)(1) of the  
5 Internal Revenue Code.

6 (ii) "Qualified energy resources" includes any solid,  
7 nonhazardous, cellulosic waste material that is segregated from other waste materials  
8 and is derived from:

9 1. any of the following forest-related resources, not  
10 including old-growth timber:

11 A. mill residues, except sawdust and wood shavings;

12 B. forest thinnings;

13 C. slash; or

14 D. brush;

15 2. waste pallets, crates, and dunnage and landscape or  
16 right-of-way trimmings; or

17 3. agricultural sources, including orchard tree crops,  
18 vineyard, grain, legumes, sugar, and other crop by-products or residues.

19 (iii) "Qualified energy resources" includes methane gas or other  
20 combustible gases resulting from the decomposition of organic materials from an  
21 agricultural operation, or from a landfill or wastewater treatment plant using one or a  
22 combination of the following processes:

23 1. anaerobic decomposition; or

24 2. thermal decomposition.

25 (4) "Qualified Maryland facility" means a facility located in the State  
26 that:

27 (i) primarily uses qualified energy resources to produce  
28 electricity and is originally placed in service on or after January 1, 2006, but before  
29 January 1, [2011] **2016**; or

30 (ii) produces electricity from a qualified energy resource that is  
31 co-fired with coal and initially begins co-firing a qualified energy resource on or after

1 January 1, 2006, but before January 1, [2011] **2016**, regardless of when the original  
2 facility was placed in service.

3 (b) (1) Except as provided in paragraphs (2) and (3) of this subsection, an  
4 individual or corporation that receives an initial credit certificate from the  
5 Administration may claim a credit against the State income tax for a taxable year in  
6 an amount equal to 0.85 cents for each kilowatt hour of electricity:

7 (i) produced by the individual or corporation from qualified  
8 energy resources at a qualified Maryland facility during the 5-year period specified in  
9 the initial credit certificate; and

10 (ii) sold by the individual or corporation to a person other than a  
11 related person, within the meaning of § 45 of the Internal Revenue Code, during the  
12 taxable year.

13 (2) If the electricity is produced from a qualified energy resource that  
14 is co-fired at a facility that produces electricity from coal, the credit is 0.5 cents for  
15 each kilowatt hour of electricity produced from the qualified energy resource instead of  
16 0.85 cents.

17 (3) The annual tax credit under this subsection may not exceed  
18 one-fifth of the maximum amount of credit stated in the initial credit certificate.

19 (c) (1) Subject to the provisions of this subsection, on application by a  
20 taxpayer, the Administration shall issue an initial credit certificate if the taxpayer has  
21 demonstrated that the taxpayer will within the next 12 months produce electricity  
22 from qualified energy resources at a qualified Maryland facility.

23 (2) The initial credit certificate issued under this subsection shall:

24 (i) state the maximum amount of credit that may be claimed by  
25 the taxpayer over a 5-year period;

26 (ii) state the earliest tax year for which the credit may be  
27 claimed; and

28 (iii) expire after the 5th consecutive tax year beginning with the  
29 earliest tax year for which the credit may be claimed.

30 (3) The maximum amount of credit stated in the initial credit  
31 certificate shall:

32 (i) for an energy producer, be in an amount equal to the lesser  
33 of:

1                   1.     the product of multiplying 5 times the taxpayer's  
2 estimated annual tax credit, based on estimated annual energy production, as certified  
3 by the Administration; or

4                   2.     \$2,500,000.

5                   (4)    **(I)**     The Administration may not issue initial credit certificates  
6 for maximum credit amounts in the aggregate totaling more than \$25,000,000.

7                                 **(II)   THE ADMINISTRATION MAY NOT ISSUE INITIAL CREDIT**  
8 **CERTIFICATES FOR CREDIT AMOUNTS LESS THAN \$1,000.**

9                   (5)    The Administration shall approve all applications that qualify for  
10 an initial credit certificate under this subsection on a first-come, first-served basis.

11                   (6)    If a taxpayer over a 3-year period does not claim on average at  
12 least 10% of the maximum credit amount stated in the initial credit certificate, the  
13 Administration at its discretion may cancel an amount of the taxpayer's initial credit  
14 certificate equal to the product of multiplying:

15                                 (i)    the amount of the credit on average that was not claimed  
16 over the 3-year period; and

17                                 (ii)   the remaining number of tax years that the taxpayer is  
18 eligible to take the credit.

19                   (7)    An applicant for an initial credit certificate or a taxpayer whose  
20 credits have been canceled under paragraph (6) of this subsection, may appeal a  
21 decision by the Administration to the Office of Administrative Hearings in accordance  
22 with Title 10, Subtitle 2 of the State Government Article.

23                   (8)    The Administration may not issue an initial credit certificate after  
24 December 31, [2010] **2015**.

25                   (d)    If the credit allowed under this section in any taxable year exceeds the  
26 State income tax, any unused credit may be carried forward and applied for  
27 succeeding taxable years until the earlier of:

28                                 (1)    the full amount of the credit is used; or

29                                 (2)    the expiration of the 10th taxable year after the taxable year in  
30 which the credit arose.

31                   (e)    (1)    On January 1, 2007, and each year thereafter, the Administration  
32 shall provide to the Comptroller a list of all taxpayers in the prior tax year that have  
33 been issued an initial credit certificate and shall specify for each taxpayer the earliest

1 tax year for which the credit may be claimed and the maximum amount of credit  
2 allowed.

3 (2) (i) On or before October 1, 2007, and each year thereafter, the  
4 Comptroller and the Administration jointly shall submit to the Governor and, subject  
5 to § 2-1246 of the State Government Article, to the General Assembly a written report  
6 regarding:

7 1. the number of certifications and taxpayers claiming  
8 the credit under this section;

9 2. the name and physical location of each taxpayer  
10 issued an initial credit certificate;

11 3. the maximum credit amount approved for each  
12 taxpayer;

13 4. the geographical distribution of the credits claimed;  
14 and

15 5. any other available information the Administration  
16 determines to be meaningful and appropriate.

17 (ii) The Comptroller shall ensure that the information is  
18 presented and classified in a manner consistent with the confidentiality of tax return  
19 information.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
21 July 1, 2010.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.